

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIABALJIT SINGH, individually and
allegedly doing business as
GREYLINE CAB/YELLOW CAB,

Plaintiff,

No. C 08-3874 PJH

v.

GAINSCO, INC. and DOES 1-10,

**ORDER DENYING
MOTION TO DISMISS**Defendants.

Defendant's motion to dismiss plaintiff's complaint for failure to state a claim upon which relief can be granted came on for hearing before this court on September 24, 2008. Plaintiff, Baljit Singh, appeared through his counsel, Christine Hiler. Defendant, Gainsco, Inc., appeared through its counsel, John J. Moura. Having read the parties' papers and carefully considered their arguments and the relevant legal authority, and good cause appearing, the court hereby DENIES defendant's motion to dismiss, for the reasons stated at the hearing, and summarized as follows.

1. The statutes of limitation for plaintiff's breach of contract and tortious bad faith claims, four and two years, respectively, began to run after May 1, 2008. Specifically, the statutory period did not begin to accrue until plaintiff discovered any harm, i.e., after defendant denied plaintiff's May 1, 2008 tender of the underlying claim. See Lambert v. Commonwealth Land Title Ins. Co., 53 Cal.3d 1072, 1077 (1991) (in a liability insurance case, "the cause of action accrues upon discovery of loss or harm, i.e., when the insurer refuses to defend."). Defendant's argument to the contrary that the complaint could be read to state that May 1, 2008 was not the first date of tender borders on frivolous. The complaint alleges a single date of tender, and defendant does not contest that date. The

1 court sees no inconsistency in the complaint.

2 2. To the extent defendant asserts that the statutory period was tolled until entry
3 of judgment in the underlying case, the doctrine of equitable tolling does not apply to this
4 case. A statutory period cannot be tolled before it has accrued, and the accrual date for
5 the instant causes of action occurred after May 1, 2008. Thus, the statutory period could
6 not have been tolled before that date.

7 Accordingly, defendant's motion is DENIED.

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9 **IT IS SO ORDERED.**

10 Dated: September 26, 2008

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13 PHYLLIS J. HAMILTON
14 United States District Judge
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